

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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DAIRY, LLC, a Delaware Limited  
Liability Company,

Plaintiff,

v.

MILK MOOVEMENT, INC., a foreign  
Corporation, and MILK MOOVEMENT  
LLC, a Delaware Limited  
Liability Company,

Defendants.

No. 2:21-cv-02233 WBS AC

MEMORANDUM AND ORDER RE:  
DEFENDANTS' MOTION TO DISMISS

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Plaintiff Dairy, LLC filed this action against  
defendants Milk Moovement, Inc. and Milk Moovement, LLC alleging  
trade secret misappropriation under the Defend Trade Secrets Act  
("DTSA"), 18 U.S.C. § 1836, and the California Uniform Trade  
Secrets Act ("CUTSA"), California Civil Code § 3426.1, and  
intentional interference with contractual relations. (First Am.  
Compl. ("FAC") (Docket No. 48).) Defendants move to dismiss all  
claims of the FAC. (Docket No. 55.)

1     I. Factual and Procedural Background

2             Plaintiff provides software to clients, including milk  
3 processors and dairy cooperatives, in the United States dairy  
4 industry. (FAC ¶¶ 2, 16.) Part of plaintiff's software, called  
5 the "producer payroll application," allows users to comply with  
6 Federal Milk Marketing Orders that regulate minimum milk prices  
7 paid to dairy producers. (Id. ¶¶ 3-4.) Plaintiff's software  
8 also generates reports to enable clients to determine whether to  
9 participate in the federal "pool" which sets a minimum price for  
10 different classes of milk. (Id. ¶¶ 18-22.)

11             California Dairies Inc. ("CDI") was one of plaintiff's  
12 customers commencing in 2014 and used plaintiff's producer  
13 payroll application. (Id. ¶¶ 32-33, 36.) Defendants provide  
14 cloud-based software to the dairy industry. (Id. ¶ 5.)  
15 Plaintiff alleges that in April 2021, defendants and CDI engaged  
16 in discussions, resulting in CDI entering into a software and  
17 services agreement with defendants in September 2021. (Id. ¶¶  
18 37, 40-41.) CDI then gave notice to plaintiff that it was  
19 terminating all software subscriptions with plaintiff as of  
20 February 1, 2022. (Id. ¶ 41.)

21             Plaintiff alleges that shortly thereafter, CDI and  
22 defendants had a call in which they discussed "confidential and  
23 trade secret information regarding [plaintiff's] producer payroll  
24 application and reporting capabilities." (Id. ¶ 42.) After the  
25 call, employees at CDI allegedly shared with defendants fifteen  
26 reports that were generated from plaintiff's software. (Id.)  
27 Plaintiff alleges that the user agreement it had with CDI  
28 restricted CDI from sharing such information. (Id. ¶¶ 57, 66.)

1           The court previously denied plaintiff's requests for a  
2 temporary restraining order and preliminary injunction. (Docket  
3 Nos. 17, 59.)<sup>1</sup> The court now considers defendants' motion to  
4 dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6).

5       II. Legal Standard

6           On a Rule 12(b)(6) motion, the inquiry before the court  
7 is whether, accepting the allegations in the complaint as true  
8 and drawing all reasonable inferences in the plaintiff's favor,  
9 the plaintiff has stated a claim to relief that is plausible on  
10 its face. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). "The  
11 plausibility standard is not akin to a 'probability requirement,'  
12 but it asks for more than a sheer possibility that a defendant  
13 has acted unlawfully." Id. "A claim has facial plausibility  
14 when the plaintiff pleads factual content that allows the court  
15 to draw the reasonable inference that the defendant is liable for  
16 the misconduct alleged." Id.

17       III. Misappropriation of Trade Secrets

18           The court will analyze the DTSA and CUTSA claims  
19 together as the "elements are substantially similar." See  
20 InteliClear, LLC v. ETC Global Holdings, Inc., 978 F. 3d 653, 657  
21 (9th Cir. 2020). Defendants argue that the FAC fails to: (1)  
22 identify plaintiff's trade secrets with sufficient particularity;  
23 (2) allege facts establishing reasonable measures to maintain

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25       <sup>1</sup> The temporary restraining order and preliminary  
26 injunction were denied because plaintiff did not show a  
27 likelihood of success on the merits. Specifically, plaintiff's  
28 evidence at the preliminary injunction phase did not sufficiently  
show that it took reasonable measures to keep the information  
secret and that defendant misappropriated the alleged trade  
secret.

1 secrecy; and (3) allege facts establishing misappropriation.  
2 (Def.'s Mot. at 2.) The court analyzes each argument below.

3 A. Particularity

4 Plaintiff is required to "describe the subject matter  
5 of the trade secret with sufficient particularity to separate it  
6 from matters of general knowledge in the trade or of special  
7 knowledge of those persons . . . skilled in the trade." Imax  
8 Corp. v. Cinema Tech., Inc., 152 F. 3d 1161, 1164-65 (9th Cir.  
9 1998) (quotations and citation omitted).

10 The FAC includes a section titled "Description of  
11 Dairy's Trade Secret." (See FAC at 5.) Within this section, the  
12 FAC first outlines the federal regulations that plaintiff's  
13 software attempts to comply with through its "producer payroll  
14 application." (See id. ¶¶ 15-22.) Next, the FAC lists the  
15 features of the "producer payroll application" that help clients  
16 comply with the federal regulations and make decisions about  
17 whether to "pool" their milk purchases. (See id. ¶ 22.) Then,  
18 the FAC explicitly states the alleged trade secret that is within  
19 the "producer payroll application." The FAC states: "Dairy's  
20 software includes and implements a methodology for handling FMMO  
21 pooling that is unique in the industry and is Dairy's trade  
22 secret." (Id. ¶ 23.)

23 Further, the FAC summarizes the "Nature of the Action"  
24 at the beginning of the FAC and identifies as the alleged trade  
25 secret "[t]he elements of Dairy's producer payroll application  
26 that enable Dairy's clients to easily and efficiently make  
27 decisions about what milk to pool, designate milk for pooling,  
28 and generate accurate reports and invoices to comply with

1 [federal regulations].” (Id. ¶ 4.) The FAC repeats the  
2 identification of this alleged trade secret when describing  
3 “count one” and “count two.” (See id. ¶¶ 55, 65.)

4         These repeated descriptions of the alleged trade secret  
5 all sufficiently “identify at least one trade secret with  
6 particularity” and “permit[] the defendant[s] to ascertain at  
7 least the boundaries within which the secret lies.” InteliClear,  
8 978 F. 3d at 659; Alta Devices, Inc. v. LG Elecs., Inc., 343 F.  
9 Supp. 3d 868, 881 (N.D. Cal. 2018).

10         The FAC does more than describe the trade secret in  
11 “broad, categorial terms.” See Albert’s Organics, Inc. v.  
12 Holzman, 445 F. Supp. 3d 463, 472 (N.D. Cal. 2020) (holding that  
13 trade secrets were not pled with sufficient particularity because  
14 categories such as “supplier information, pricing, [and]  
15 financing” were too broad). The FAC does not broadly state that  
16 plaintiff’s software is its trade secret, but rather the  
17 “description pertains to a single, distinct system and the  
18 components therein,” specifically the pooling methodology within  
19 the “producer payroll application.” See Inteliclear LLC v. ETC  
20 Global Holdings, No. 2:18-v-10342, 2019 WL 3000648, at \*2 (C.D.  
21 Cal. Apr. 5, 2019) (trade secret was defined with sufficient  
22 particularity as the “unique design and concepts and the unique  
23 software, formulas, processes, programs . . . by which the system  
24 components interrelate and process data”); (FAC ¶¶ 23, 55, 65.)

25         Defendants argue the alleged trade secret “lacks  
26 boundaries” because the FAC states that the trade secret  
27 information is “including, but not limited to” the pooling  
28 methodology and the pooling methodology is “amongst Dairy’s trade

secrets.” (See FAC ¶¶ 4, 55, 65.) However, that language is used differently here than the hedging language was used in the complaint in Cutera, Inc. v. Lutronic Aesthetics, Inc., No. 2:20-cv-00235-KJM-DB, 2020 WL 4937129, at \*5 (E.D. Cal. Aug. 24, 2020). In Cutera, the complaint included “a non-exhaustive list of trade secrets” and alleged the defendant had misappropriated “any number of undefined trade secrets.” Id. at \*5. Here, the FAC specifically identifies the pooling methodology as a trade secret and does not include a “non-exhaustive list.” Further, at the pleading stage, “it is not fatal” that plaintiff’s “hedging language left open the possibility of expanding its identifications later.” See InteliClear, 978 F. 3d at 659.<sup>2</sup>

Zoom Imaging Solutions, Inc. v. Roe, No. 2:19-cv-01544-WBS-KJN, 2019 WL 658 WL 5862594 (E.D. Cal. Nov. 8, 2019), cited by defendants, is distinguishable, in that this court in that case granted the motion to dismiss because the complaint did not “distinguish between the [c]onfidential [i]nformation and the trade secrets.” See id. at \* 5. Specifically, the complaint there simply alleged that the trade secrets were part of the confidential information categories the complaint listed. See id. at \*4. In contrast, the FAC here identifies the pooling methodology as the alleged trade secret, and therefore, distinguishes between the confidential information and the trade

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<sup>2</sup> Though InteliClear examined whether a trade secret was defined with sufficient particularity at the motion for summary judgment phase and examined the “hedging language” in a declaration, its proposition is instructive here because even less particularity is necessary at the pleading stage where no discovery has occurred.

1 secret.

2 For these reasons, the court concludes that the FAC  
3 sufficiently identifies the trade secret with particularity  
4 without spelling "out the details of the trade secret" as doing  
5 so "would mean that the complainant would have to destroy the  
6 very thing for which [it seeks] protection." See TMX Funding,  
7 Inc. v. Impero Techs. Inc., No. C 10-00202 JF (PVT), 2010 WL  
8 2509979, at \*3 (N.D. Cal. June 17, 2010). Defendants can  
9 ascertain that the trade secret is the pooling methodology used  
10 in the "producer payroll application" within plaintiff's  
11 software.

12 B. Reasonable Measures to Maintain Secrecy

13 The FAC spends three pages discussing numerous ways in  
14 which plaintiff attempts to protect its trade secrets, including  
15 the producer payroll application containing the pooling  
16 methodology. (FAC ¶¶ 26-31 ("requires clients . . . to agree to  
17 confidentially terms," "restrictions on access to and use of its  
18 producer payroll application," and "engages a nationally  
19 recognized third-party security auditor").) These allegations,  
20 accepted as true, are sufficient to meet the plausibility  
21 standard required at the pleading stage. See Ashcroft, 556 U.S.  
22 at 678. Defendants' arguments on this element, including their  
23 interpretation of plaintiff's user agreement, are better suited  
24 for a later stage of this action, as they pertain to disputed  
25 facts which will determine the "reasonableness" of the alleged  
26 secrecy measures.

27 C. Misappropriation

28 The FAC must allege facts demonstrating that

1 plaintiff's trade secrets were misappropriated, meaning  
2 defendants improperly acquired, disclosed or used plaintiff's  
3 trade secrets. See Cal. Civ. Code § 3426.1(b); 18 U.S.C §  
4 1839(5). Plaintiff's theory of misappropriation rests on  
5 defendants improperly acquiring the trade secrets and then using  
6 them. (FAC ¶¶ 47-50, 59, 68.) Specifically, the FAC alleges  
7 that defendants received the trade secret information from CDI  
8 via emailed reports from plaintiff's software and conversations  
9 with CDI, and then defendants used plaintiff's pooling  
10 methodology in their own software. (FAC ¶¶ 42, 49.)

11 Defendants argue that the FAC's allegations regarding  
12 an email from CDI sending reports to defendants are insufficient  
13 because the email does not clearly indicate that any of  
14 plaintiff's trade secrets were discussed. (Defs.' Mot. at 25.)  
15 Whether the email exchange indicates that conversations were had  
16 between CDI and defendants regarding the alleged trade secrets is  
17 a dispute not to be resolved at the pleading stage. At this  
18 stage of the proceedings, the court must "accept as true" the  
19 allegations contained in the FAC. See Ashcroft, 556 U.S. at 678.

20 The FAC alleges that the user agreement restricts CDI  
21 from sharing the reports freely, and contains sufficient factual  
22 allegations from which it is plausible to conclude that  
23 defendants "knew or had reason to know" about the confidentiality  
24 agreement between CDI and plaintiff and that the information  
25 being shared was a trade secret. (FAC ¶¶ 31, 43.) Specifically,  
26 the FAC alleges that restricting access to the software and its  
27 outputs is common in the dairy supply chain industry, and  
28 therefore, defendants would know that plaintiff's alleged trade



1 secrets are not publicly available. (Id. ¶ 43.)

2 Defendants note that the FAC pleads facts regarding  
3 misappropriation, including how defendants implemented the  
4 alleged trade secrets into their software, “on information and  
5 belief” and argues that these allegations should be ignored.  
6 (See Defs.’ Mot. at 9; FAC ¶¶ 47, 49-50.) However, “the Twombly  
7 plausibility standard . . . does not prevent a plaintiff from  
8 pleading facts alleged upon information and belief where the  
9 facts are peculiarly within the possession and control of the  
10 defendant or where the belief is based on factual information  
11 that makes the inference of culpability plausible.” Soo Park v.  
12 Thompson, 851 F. 3d 910, 928 (9th Cir. 2017) (citations and  
13 quotations omitted); see also Autodesk, Inc. v. ZWCAD Software  
14 Co., Ltd., No. 5:14-cv-01409-EJD, 2015 WL 2265479, at \*6 (N.D.  
15 Cal. May 13, 2015) (“[I]t it would be unreasonable to require a  
16 plaintiff to demonstrate the precise ways in which Defendants may  
17 have used their trade secrets given that Defendants are the only  
18 ones who possess such information”) (quotations omitted).

19 Here, the FAC provides more than “naked assertions made  
20 upon information and belief” and includes “further factual  
21 enhancement” about defendants’ need for the trade secret  
22 information given their recent launch in the United States. See  
23 Ashcroft, 556 U.S. at 678; (FAC ¶¶ 39, 47-48, 50.) The FAC  
24 sufficiently alleges misappropriation at the pleading stage.

25 For the foregoing reasons, defendants’ motion to  
26 dismiss the DTSA and CUTSA claims will be denied.

#### 27 IV. Intentional Interference with Contractual Relations

28 The elements “for the tort of intentional interference

1 with contractual relations are (1) a valid contract between  
2 plaintiff and a third party; (2) defendant's knowledge of this  
3 contract; (3) defendant's intentional acts designed to induce a  
4 breach or disruption of the contractual relationship; (4) actual  
5 breach or disruption of the contractual relationship; and (5)  
6 resulting damage." United Nat. Maint., Inc. v. San Diego  
7 Convention Center, Inc., 766 F. 3d 1002, 1006 (9th Cir. 2014)  
8 (citations and quotations omitted).

9           The FAC plausibly alleges each of the elements of an  
10 intentional interference with contractual relationship claim.  
11 First, plaintiff alleges plaintiff and CDI "entered into a user  
12 agreement in 2014" for CDI to access plaintiff's software and  
13 other services. (See FAC ¶ 33.) Second, plaintiff alleges that  
14 defendants knew of the contract between CDI and plaintiff as  
15 defendants discussed CDI's use of plaintiff's software and CDI  
16 shared reports from plaintiff's software with defendants. (See  
17 id. ¶¶ 40, 42, 74.) Third, plaintiff alleges in multiple  
18 paragraphs that defendants intentionally requested non-trade  
19 secret information about plaintiff's software which CDI was not  
20 allowed to share per its contract with plaintiff and used that  
21 information to create their own software for CDI in place of  
22 plaintiff's software. (See id. ¶¶ 42-43, 49-50, 53, 75-76.)  
23 Fourth, plaintiff alleges that CDI did share confidential  
24 information, in breach of the agreement between plaintiff and  
25 CDI, with defendants via email and verbal conversations and  
26 terminated its contract with plaintiff. (See id. ¶¶ 31, 42.)  
27 Fifth, plaintiff alleges that plaintiff "has suffered and will  
28 continue to suffer substantial damages in an amount to be proven

1 at trial" resulting from defendants' interference. (Id. ¶ 78.)  
2 Accepting these allegations as true and drawing reasonable  
3 inferences, the FAC states a plausible claim to relief for  
4 intentional interference with contractual relations.  
5 See Ashcroft, 556 U.S. at 678.

6           Though plaintiff has plausibly alleged its claim for  
7 intentional interference with contractual relations, the court  
8 must determine if CUTSA supersedes the claim. CUTSA provides the  
9 exclusive civil remedy for trade secret misappropriation under  
10 California law. Cal. Civ. Code § 3426.7. "[O]ther civil  
11 remedies that are not based upon misappropriation of a trade  
12 secret" and contractual or criminal remedies are not superseded.<sup>3</sup>  
13 Cal. Civ. Code § 3426.7(b). CUTSA supersedes claims that are  
14 based on the same "nucleus of facts as trade secret  
15 misappropriation." See Waymo LLC v. Uber Techs., Inc., 256 F.  
16 Supp. 3d 1059, 1062 (N.D. Cal. 2017) (citing K.C. Multimedia,  
17 Inc. v. Bank of America Tech. & Operations, 171 Cal. App. 4th  
18 939, 958 (6d. Dist. 2009)).

19           Here, the FAC's intentional interference with  
20 contractual relations claim alleges defendants induced CDI to  
21 breach its confidentiality obligations and terminate its  
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23           <sup>3</sup> Courts use both the terms "preempt" and "supersede" to  
24 describe the displacement of causes of action by CUTSA. The  
25 California Supreme Court has noted that "the doctrine of  
26 preemption concerns whether a federal law has superseded a state  
27 law or a state law has superseded a local law," and therefore,  
28 "preempt" is not the proper term to use where "one provision of  
state law has displaced other provisions of state law." See  
Zengen, Inc. v. Comercia Bank, 41 Cal. 4th 239, 244 n.5 (2007).  
Hence, the court will use the term "supersede."

1 agreement with plaintiff "by requesting that CDI provide  
2 confidential, non-trade secret, information about the structure,  
3 functionality, and operation of [plaintiff's] software." (FAC ¶  
4 75.) Plaintiff's intentional interference with contractual  
5 relations claim focuses on "non-trade secret" information which  
6 is different than the "trade secret" upon which plaintiff's CUTSA  
7 claim relies. Whether CUTSA supersedes a claim when "non-trade  
8 secret" information is received by the defendants is a question  
9 that has yet to be determined in any court decision that is  
10 binding upon this court. Therefore, this court relies on  
11 decisions by the California Court of Appeal and an unpublished  
12 Ninth Circuit decision to determine this issue.<sup>4</sup>

13 Like the non-CUTSA claim in Silvaco Data Systems v.  
14 Intel Corporation, 184 Cal. App. 4th 210, 241-42 (6th Dist.  
15 2010), the intentional interference with contractual relations  
16 claim "does not depend on the existence of a trade secret, but  
17 on" defendants intentionally inducing a breach or disruption of  
18 the contract between CDI and plaintiff. Id. "[T]he legal  
19 consequences of that act are not affected by the status of the  
20 information as a trade secret. Indeed, it may not, and need not,  
21 be a trade secret." Id. at 242 (emphasis in original).

22 The California Court of Appeal in Angelica Textile  
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24 <sup>4</sup> "A federal court applying California law must apply the  
25 law as it believes the California Supreme Court would apply it .  
26 . . . . In the absence of a controlling California Supreme Court  
27 decision, the panel must predict how the California Supreme Court  
28 would decide the issue, using intermediate appellate court  
decisions, statutes, and decisions from other jurisdictions as  
interpretive aids." Gravquik A/S v. Trimble Navigation Intern.  
Ltd., 323 F. 3d 1219, 1222 (9th Cir. 2003).

1 Services, Inc. v. Park, 220 Cal. App. 4th 495, 506-07 (4th Dist.  
2 2013), adopted Silvaco's reasoning, and the Ninth Circuit cited  
3 Angelica in an unpublished opinion when determining that a breach  
4 of fiduciary duty claim based on an employee "sharing  
5 confidential information with a competitor . . . does not require  
6 that the confidential information qualify as a 'trade secret.'"   
7 See Integral Dev. Corp. v. Tolat, 675 F. App'x 700, 704 (9th Cir.  
8 2017) (determining supersession did not apply).

9           Interpreting the California Court of Appeal and Ninth  
10 Circuit decisions, this court determines it is plausible for  
11 defendants to have interfered with the contract between CDI and  
12 plaintiff without it involving the "misappropriation of trade  
13 secrets" as the claim is focused on "non-trade secret"  
14 information. See Cal. Civ. Code § 3426.7(b); (FAC ¶ 75.)  
15 Therefore, CUTSA does not supersede plaintiff's intentional  
16 interference with contractual relations claim and will not be  
17 dismissed.

18           IT IS THEREFORE ORDERED that defendants' motion to  
19 dismiss (Docket No. 55) be, and the same hereby is, DENIED.

20 Dated: April 13, 2022



21 **WILLIAM B. SHUBB**  
22 **UNITED STATES DISTRICT JUDGE**  
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